

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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PHILIP E. DEBLASIO,

Plaintiff,

-v-

NYC HEALTH & HOSPITAL CORPORATION ET AL.,

Defendants.
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18-cv-8530 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

On May 1, 2020, Defendants moved to dismiss Plaintiff's complaint based on his failure to prosecute this action. Dkt. No. 43. On the same day, the Court ordered Plaintiff to show cause why the action should not be dismissed by June 22, 2020. Dkt. No. 44. However, the docket had not been updated to reflect Plaintiff's transfer to a different correctional facility. Dkt. No. 47 at 2. On July 22, 2020, the Court directed the Clerk of Court to update Plaintiff's address and extended Plaintiff's deadline to show cause in writing why this action should not be dismissed for failure to prosecute to September 1, 2020. Dkt. No. 47. Plaintiff has filed no letter showing cause.

Fed. R. Civ. P. 41(b) authorizes a court to dismiss a plaintiff's case when it fails to prosecute. However, Rule 41(b) dismissal is "a harsh remedy to be utilized only in extreme situations." *Theilmann v. Rutland Hospital, Inc.*, 455 F.2d 853, 855 (2d Cir. 1972). Further, *pro se* plaintiffs are "granted special leniency regarding procedural matters." *Lucas v. Miles*, 84 F.3d 532, 535 (2d Cir. 1996).

The Second Circuit has laid down five factors a district court should consider when contemplating dismissal of a case for failure to prosecute: (1) the duration of the plaintiff's failures; (2) whether plaintiff had received notice that further delays would result in dismissal; (3) whether the defendant is likely to be prejudiced by further delay; (4) whether the district judge has taken care to strike the balance between alleviating court calendar congestion and protecting a party's right to due process and a fair chance to be heard; and (5) the efficacy of lesser sanctions. *Alvarez v. Simmons Mkt. Research Bureau, Inc.*, 839 F.2d 930, 932 (2d Cir. 1988) (internal quotations and citations omitted).


The factors here weigh in favor of dismissal. First, Plaintiff has not responded to discovery requests since September 2019. Dkt. No. 43 at 2. Second, Plaintiff has been notified that further delays might result in dismissal, including in this Court's most recent order directing Plaintiff to show cause why the case should not be dismissed. Dkt. No. 47. Third, Defendant

will suffer prejudice, because it cannot prepare a defense so long as Plaintiff fails to comply with discovery requests. Fourth, dismissing the case will not violate Plaintiff's right to due process in light of the fact that Plaintiff has not taken any action in this case in over a year. *Hibbert v. Apfel*, 2000 WL 977683, at *3 (S.D.N.Y. July 17, 2000) ("It is not the function of this Court to chase dilatory plaintiffs while other litigants in this district seek access to the courts."). Fifth, dismissal is an appropriate sanction given Plaintiff's evident abandonment of his claims.

For these reasons, this case is DISMISSED WITHOUT PREJUDICE. The Clerk of Court is respectfully directed to close the case.

SO ORDERED.

Dated: October 8, 2020
New York, New York


LEWIS J. LIMAN
United States District Judge